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STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]

DECISION

MPA/142563

PRELIMINARY RECITALS

Pursuant to a petition filed July 24, 2012, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Office of the Inspector General in regard to Medical Assistance, a hearing was held on September 12, 2012, at Racine, Wisconsin.

The issue for determination is whether the Office of the Inspector General (hereinafter referred to as the OIG) correctly denied Petitioner's request for occupational therapy twice a week for 13 weeks.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703
By: Office of the Inspector General by Letter
1 West Wilson Street, Room 272
P.O. Box 309
Madison, WI 53707-0309

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

NOTE: The record was held open until September 13, 2012, to give Petitioner's occupational therapist an opportunity to submit an evaluation completed in April 2011, the clinical notes and plans of care from the summer of 2011 and the clinical notes and plans of care from the summer of 2012. The April 27, 2011 evaluation has been marked as Exhibit 5; the plan of care and clinical notes for May 9, 2011 to August 7, 2011 have been marked as Exhibit 6; the plan of care and clinical notes for August 8, 2011 through

discharge on September 6, 2011 have been marked as Exhibit 7; The plan of care and clinical notes for 6/14/12 through 9/12/12 have been marked as Exhibit 8.

FINDINGS OF FACT

1. Petitioner is a resident of Racine County.
2. Petitioner is eight years old and is diagnosed with Down 's Syndrome. (Testimony of Petitioner's mother; Exhibit 3- OIG letter and Exhibit 4 – Petitioner's Prior Authorization Request and Individualized Education Program (IEP))
3. Petitioner received occupational therapy from Medical Support Services from September 2008 through September 2011. (Exhibit 3, Letter from OIG)
4. Medical Support Services discharged Petitioner from care in September 2011 because he had an IEP for the 2011/2012 school year, which included occupational therapy through the public school, seven times per month for 20 minute sessions. The annual goals of the IEP included independent ability to snap/unsnap closures, to button/unbutton medium buttons and zip/unzip on 3 of 5 occasions. (Exhibit 4, IEP; testimony of Claire Rosen)
5. Petitioner was discharged with a home plan of care which required his parents to continue teaching him how to work fasteners and brush his teeth. The home plan of care included exercises to help the petitioner with hand strength and dexterity. Petitioner's mother implemented the home plan of care approximately once a week. (Testimony of Petitioner's mother and Ms. Rosen and Exhibit 4, pg. 3 –Occupational Therapy Orders for Discontinuation)
6. Petitioner needs to learn how to work various fasteners like buttons, zippers and laces so that he can independently get dressed, go to the bathroom or put on a jacket and shoes to go outside.
7. At the time of his discharge in September 2011, the Petitioner was able to independently button ¼” buttons and squeeze 1-2 snaps together, but when he was evaluated in May 2012, he was needed assistance at least 25% of the time to work ¼” buttons and he again needed assistance with the alignment of snaps. At the time of his discharge, the Petitioner was able to complete the first step in the shoe tying sequence, but the May 2012 evaluation indicated that Petitioner needed maximum assistance for all steps of shoe tying. (Testimony of Ms. Rosen, Exhibit 7 and Exhibit 4, pgs. 13-18)
8. On June 8, 2012, Medical Support Services submitted a prior authorization request on behalf of the Petitioner seeking 26 sessions of occupational therapy (2 sessions per week for 13 weeks) effective May 31, 2012. (Exhibit 4, pg. 5)
9. On June 18, 2012, the Division of Health Care Access and Accountability (DHCAA) sent Medical Support Services a request for additional information, to which Medical Support Services timely replied. (Exhibit 4, pgs. 44-50)
10. On July 2, 2012, DHCAA sent Petitioner and Medical Support Services letters denying the request for occupational therapy. (Exhibit 4, pgs. 51-57)
11. On July 24, 2012, Petitioner's mother submitted a request for fair hearing on behalf of the Petitioner. (Exhibit 1)

DISCUSSION

The Department of Health Services requires prior authorization for certain services in order to:

1. Safeguard against unnecessary or inappropriate care and services;
2. Safeguard against excess payments;

3. Assess the quality and timeliness of services;
4. Determine if less expensive alternative care, services or supplies are usable;
5. Promote the most effective and appropriate use of available services and facilities; and
6. Curtail misutilization practices of providers and recipients.

Wis. Admin. Code § DHS107.02(3)(b)

Medical assistance covers occupational therapy if the recipient obtains prior authorization after the first 35 visits. Wis. Adm. Code § HFS 107.17(2)(b).

“In determining whether to approve or disapprove a request for prior authorization, the department shall consider:

1. The medical necessity of the service;
2. The appropriateness of the service;
3. The cost of the service;
4. The frequency of furnishing the service;
5. The quality and timeliness of the service;
6. The extent to which less expensive alternative services are available;
7. The effective and appropriate use of available services;
8. The misutilization practices of providers and recipients;
9. The limitations imposed by pertinent federal or state statutes, rules, regulations or interpretations, including Medicare, or private insurance guidelines;
10. The need to ensure that there is closer professional scrutiny for care which is of unacceptable quality;
11. The flagrant or continuing disregard of established state and federal policies, standards, fees or procedures; and
12. The professional acceptability of unproven or experimental care, as determined by consultants to the department.”

Wis. Admin. Code § DHS107.02(3)(e)

“Medically necessary” means a medical assistance service under ch. DHS 107 that is:

- (a) Required to prevent, identify or treat a recipient's illness, injury or disability; and
- (b) Meets the following standards:

1. Is consistent with the recipient's symptoms or with prevention, diagnosis or treatment of the recipient's illness, injury or disability;
2. Is provided consistent with standards of acceptable quality of care applicable to the type of service, the type of provider, and the setting in which the service is provided;
3. Is appropriate with regard to generally accepted standards of medical practice;
4. Is not medically contraindicated with regard to the recipient's diagnoses, the recipient's symptoms or other medically necessary services being provided to the recipient;
5. Is of proven medical value or usefulness and, consistent with s. DHS 107.035, is not experimental in nature;
6. Is not duplicative with respect to other services being provided to the recipient;
7. Is not solely for the convenience of the recipient, the recipient's family, or a provider;
8. With respect to prior authorization of a service and to other prospective coverage determinations made by the department, is cost-effective compared to an alternative medically necessary service which is reasonably accessible to the recipient; and

9. Is the most appropriate supply or level of service that can safely and effectively be provided to the recipient.

Wis. Adm. Code. §DHS 101.03(96m)

Petitioner has the burden to prove, by a preponderance of the credible evidence that the requested level of therapy meets the approval criteria.

It is the position of the OIG that further occupational therapy would be ineffective and is therefore, medically unnecessary, because Petitioner has received occupational therapy for four years without significant improvement in his ability perform self-care, such as buttoning a shirt, or zipping a jacket. However, the plans of care established between January 23, 2009 and January 23, 2011, all indicate that the Petitioner met many of the established goals and progressed. (See Exhibit 3)

For example, on January 23, 2009, the Petitioner demonstrated an emerging ability to initiate and maintain supinated grasp on feeding utensil. By July 28, 2009, the Petitioner met the goal of being able to maintain a supinated grasp on a feeding utensil and he was able to cut with a fork and knife, with moderate assistance to stabilize and direct the fork. By January 26, 2010, the Petitioner was able to independently poke non-stabilized food with a fork.

Other examples are Petitioner's ability to button clothing and use zippers. The plans of care indicate that over the years Petitioner has improved his ability to button clothing, moving from working buttons on clothing that is resting on his lap, to working buttons on clothing that he is wearing, and moving from larger buttons to smaller buttons. The plans indicate that Petitioner progressed from being able to get a zipper up on his pants from 50% of the way up, to 75% of the way up, to 100% of the way up, to engaging a zipper on clothing that he is wearing.

The plans of care are reliable as medical records and there is no reason established in the record to doubt their accuracy or reliability. The plans of care establish that Petitioner benefitted from and made progress after receiving occupational therapy.

Petitioner's therapist asserts that occupational therapy over the summer has been necessary because Petitioner's ability to perform self-care tasks regressed, despite implementation of home care and school-based occupational therapy between September 2011 and May 2012. Petitioner's therapist testified credibly, the Petitioner was able to independently button ¼ " buttons and squeeze 1-2 snaps together at the time of his discharge in September 2012, but when he was evaluated in May 2012, he needed assistance at least 25% of the time to work ¼" buttons and he again needed assistance with the alignment of snaps. The record shows that according to the August 2011 plan of care, the Petitioner was able to complete the first step in the shoe tying sequence, but the May 2012 evaluation indicated that Petitioner needed maximum assistance for all steps of shoe tying.

Based upon the foregoing it is found the requested occupational therapy is necessary to address Petitioner's regression in his ability to perform self-care tasks. It should be noted that Petitioner's mother testified credibly that as of the date of the hearing, Petitioner was buttoning and unbuttoning his shirts on his own and exhibited improved fork and knife control, after having received occupational therapy over the summer. (See also Exhibit 8)

I note to the Petitioner that his provider, Medical Support Services, Inc., will not receive a copy of this Decision. In order to have the requested occupational therapy approved, the Petitioner/Petitioner's mother must provide a copy of this decision to Medical Support

Services, Inc. The provider must then submit a new prior authorization request to receive the approved coverage.

CONCLUSIONS OF LAW

The OIG did not correctly deny authorization for occupational therapy.

THEREFORE, it is

ORDERED

That Medical Support Services, Inc. may submit a claim and new prior authorization request, together with a copy of this Decision, to ForwardHealth for payment of occupational therapy services rendered between May 31, 2012 and September 12, 2012.

I again note to the Petitioner that his provider, Medical Support Services, Inc., will not receive a copy of this Decision. In order to have the requested speech therapy approved, the Petitioner /Petitioner's parent must provide a copy of this decision to Medical Support Services, Inc. The provider must then submit a new prior authorization request to receive the approved coverage.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 14th day of September, 2012.

Mayumi M. Ishii
Administrative Law Judge
Division of Hearings and Appeals

c: Division of Health Care Access And Accountability - email
Department of Health Services - email



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

David H. Schwarz
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on September 14, 2012.

Division of Health Care Access And Accountability